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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962.

No. 1051

BENJAMIN RITHOLZ,

Petitioner,

vs.

RICHARD B. OGILVIE, SHERIFF OF COOK COUNTY, ILLINOIS, SUCCESSOR IN OFFICE TO FRANK G. SAIN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI.

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THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO

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The petition for certiorari in this case presents no "federal question of substance" as required by Rule 19 of this Court and it should be denied. Reference to the petition will show also that it does not comply with Rule 23 of this Court which provides:

> "(1) If review of the judgment of a state court is sought, the statement of the case shall also specify the stage in the proceedings in the court of first instance *and in the appellate court*, at which, and the manner in which, the *federal questions* sought to be reviewed were raised; the method of raising them . . .

> and the way in which they were passed upon by the court . . . as will show that *the federal question was timely and properly raised* so as to give this court jurisdiction to review the judgment on writ of certiorari." (Emphasis added.)

The statement of the case in the petition for certiorari utterly fails to show that any federal question was ever presented to the Supreme Court of Illinois. In fact, no such question was ever presented to that court, and the record now before this court so indicates.

Appellant's Brief in the Supreme Court of Illinois discussed only the doctrine of *res judicata* and did not raise or present any federal question or even intimate that one was involved. Appellee's Brief, in turn, discusses no federal question. In the Reply Brief, petitioner contended only, in conclusion, that "due process requires that that [his theory of the case] be so." (Reply Br. 9.) It is clear, therefore, that no federal question was presented to or passed upon by the Supreme Court of Illinois and a reading of that court's opinion (Pet. 29-31) discloses that they neither discussed nor passed upon any such question. The court relied only upon Illinois statutes and cases for its conclusions. Appellant's Petition for Rehearing did not raise any federal question but merely complained, *inter alia*, that the Supreme Court of Illinois had overlooked "our law" on the doctrine of *res judicata* (Pet. Reh. 3).

Moreover, even the vague allegation in petitioner's Reply Brief in the Supreme Court of Illinois that "due process" is somehow involved has been abandoned in this Court for the petition for certiorari makes no reference to, and bases no argument upon, the due process clause of the fourteenth amendment.

Even assuming, however, that a federal question has been properly raised, *Collins* v. *Loisel*, 262 U. S. 426, 430 is

ample authority for the decision of the Supreme Court of Illinois that the doctrine of *res judicata* does not foreclose a second attempt at extradition where the relator was discharged from the first proceeding for a technical fault in the papers. And see the cases collected in C. J. S. *Habeas Corpus*, § 104(b); Am. Jur. *Extradition*, § 57; Annotation, 102 A. L. R. 303.

We believe petitioner has utterly failed to show that a substantial federal question is involved in this case or that one was ever presented to or passed upon by the Supreme Court of Illinois. Since the petition for certiorari does not comply with Rules 19 and 23 of this Court we request that it be denied.

Respectfully submitted.

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